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October 6, 1997

VIA HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW, Room No. 222
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: In the Matter of Telecommunications Services
Inside Wiring, Customer Premises Equipment
CS Docket No. 95-184

In the Matter of Implementation of the Cable
Television Consumer Protection and Competition
Act of 1992: Cable Home Wiring
MM Docket No. 92-260

Dear Mr. Caton:

Transmitted herewith, on behalf of United States Satellite Broadcasting Company, Inc. ("USSB"), are an original and four copies of its Reply Comments in the above-referenced proceedings.

Should there be any questions, please communicate with the undersigned.

Very truly yours,



Marvin Rosenberg
Counsel for United States Satellite
Broadcasting Company, Inc.

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Telecommunications Services Inside Wiring

Customer Premises Equipment

In the Matter of

Implementation of the Cable Television Consumer Protection and Competition Act of 1992:

Cable Home Wiring

CS Docket No. 95-184

MM Docket No. 92-260

**REPLY COMMENTS OF
UNITED STATES SATELLITE BROADCASTING COMPANY, INC.**

**UNITED STATES SATELLITE
BROADCASTING COMPANY, INC.**

Marvin Rosenberg
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Its Counsel

October 6, 1997

Before the
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and Competition Act of 1992:)	
)	
Cable Home Wiring)	

**REPLY COMMENTS OF
UNITED STATES SATELLITE BROADCASTING COMPANY, INC.**

I. INTRODUCTION.

1. United States Satellite Broadcasting Company, Inc. ("USSB"), by its counsel, hereby submits its reply comments in response to the *Further Notice of Proposed Rule Making* released by the Commission in the above-captioned proceedings on August 28, 1997 ("*Further Notice*").

2. USSB is a DBS licensee providing multichannel video programming by satellite directly to subscribers' homes. USSB has a direct interest in these proceedings in that it seeks to ensure that subscribers living in multiple dwelling units (MDUs) are able to receive and enjoy DBS programming. USSB believes that individuals should not be deprived of the

many program offerings available from DBS and other multichannel video programming distributors ("MVPDs") merely because they choose to, or for economic reasons, must, live in MDUs.

3. In the *Further Notice*, the Commission seeks comments on proposed rules governing the disposition of cable inside wiring in MDUs, upon termination of the incumbent service. Specifically, the Commission proposes to establish procedures to determine the ownership and control of the "home run" wiring (the wiring that runs from the point at which the wiring is dedicated to an individual unit to the demarcation point outside the individual unit) and the cable home wiring (the wiring between the demarcation point and the subscriber's television). The proposed procedures apply on a building-by-building basis and on a unit-by-unit basis.

4. USSB generally supports the Commission's recognition that the current cable inside wiring rules are anticompetitive and must be amended in order to "more effectively promote competition and consumer choice." *Further Notice* at ¶ 2. USSB believes, however, that the inside wiring rules proposed in the *Further Notice* fall short of what is needed to introduce competition into the multichannel video programming marketplace. The proposed rules do not go far enough in eliminating the barriers to entry for alternative MVPDs. USSB urges the Commission to revise the proposed rules to ensure that alternative MVPDs have access to the cable wiring within MDUs so that MDU residents can enjoy the benefits of video competition.

II. THE PROPOSED INSIDE WIRING RULES FALL SHORT OF WHAT IS NEEDED TO INTRODUCE COMPETITION INTO THE MULTICHANNEL VIDEO PROGRAMMING MARKET.

5. In terms of providing multichannel video programming, the preexisting cable inside wiring in MDUs is the lifeline to individual subscribers residing in MDUs. Alternative MVPDs must be able to use and have unrestricted access to the existing wiring in order to compete with the incumbent video service provider.

6. Under the Commission's proposed disposition framework, upon notice of termination of service by an MDU owner, the incumbent provider may elect to either remove its home run wiring, abandon the wiring or sell the wiring to the MDU owner or an alternative MVPD. USSB submits that allowing an incumbent provider to remove the existing home run wiring is an anticompetitive barrier to entry for alternative MVPDs, since there would necessarily be a delay in service due to the need to install the new inside wiring. In order to eliminate this barrier to entry, USSB urges the Commission to either move the demarcation point to the lockbox or forbid an incumbent provider from removing the home run wiring without first offering it for sale at salvage value.

A. The Commission Should Move The Demarcation Point To The Lockbox.

7. For purposes of competition, the demarcation point is significant because it defines the point where an alternative MVPD may attach its wiring to the subscriber's wiring in order to provide service. The current cable demarcation point in MDUs (at or about 12 inches outside of where the cable wire enters the subscriber's individual dwelling unit) is anticompetitive because it is often embedded in brick, plaster, or cinder blocks, or encased in conduits or moldings, and therefore is not readily accessible to alternative MVPDs.

8. In order for alternative MVPDs to compete head-to-head with an incumbent provider, the Commission should move the demarcation point to the lockbox, which would make the home run wiring part of the home wiring. The lockbox is the most procompetitive location for the demarcation point. First, it will permit ease of connection to the entire MDU inside wiring system for the new MVPD. Second, it is least intrusive to the MDU owner because the new service provider will only have to supplement the already existing wiring in the building. Third, it will enable subscribers to enjoy their new service in the shortest practicable time frame.

9. Further, in light of the removal option, moving the demarcation point to the lockbox is more practical. Where the incumbent service provider chooses the removal option, the lockbox location would obviate the need to distinguish between home run wiring and home wiring and result in the removal of minimal wiring.

B. The Incumbent Provider Should Be Prohibited From Removing Its Home Run Wiring Unless It First Offers The Wiring For Sale At Salvage Value.

10. As discussed above, the home run wiring is an important piece of wiring because its ownership or control can operate as a barrier to entry for potential alternative MVPD providers. Thus, if the Commission does not move the demarcation point to the lockbox, USSB urges the Commission to take action to forbid the incumbent provider from removing its home run wiring without first offering it for sale at salvage value.

11. Requiring alternative MVPDs to replace the existing home run wiring is anticompetitive. Undoubtedly, the MDU owner will be reluctant to switch to a new service provider if that would require removal of the existing wiring and installation of new wiring. This would be disruptive and inconvenient for both the MDU owner and the building's

residents. Indeed, an incumbent provider need only threaten removal of the existing wiring to cause the MDU owner to rethink the decision to switch video service providers.

12. Initially, upon termination of service, the incumbent provider should be limited to either abandoning the wiring or selling the wiring to the MDU owner or to an alternative MVPD at salvage value. Only if the offer for sale is declined, should the incumbent provider have the right to remove the wiring.

13. Restricting the incumbent provider in this way, will eliminate the "threat" behind the removal option and the disincentive for MDU owners to switch service providers in the first instance.

C. The Rules Must Require The Incumbent Provider To Cooperate With The MDU Owner and The New Service Provider To Ensure A Smooth Transition From The Old Service To The New Service.

14. If the Commission decides to permit the incumbent provider to remove the home run wiring without first offering it for sale, then the rules also must require the incumbent provider to cooperate with the MDU owner and the new service provider to ensure a smooth transition from the old service to the new service. Faced with the prospect that its residents will experience a prolonged service interruption, the MDU owner will have yet another reason to remain with the incumbent service provider. Thus, the Commission should make the following revisions to the proposed disposition rules.

15. First, the rules should provide that where the incumbent provider elects the removal option it must remove the home run wiring in its entirety and in such a manner that new home run wiring can be readily connected to the lockbox and the home wiring.

16. Second, the incumbent provider must be required to coordinate the removal of its home run wiring with the MDU owner and the new service provider. This will minimize service disruptions and enable the new service provider to lay its wiring before the incumbent provider removes the existing wiring.

17. Third, if the incumbent provider intentionally removes the existing wiring before the new service provider is ready to install the new wiring, then the rules should allow the new service provider to obtain reimbursement of all reasonable restoration costs from the incumbent provider.

II. REPLY COMMENTS ON THE COMMISSION'S ALTERNATIVE PROPOSALS

18. The rules should permit a second wire to be installed within the existing molding or conduit. *See Further Notice* at ¶ 83. If an MDU desires to offer its residents alternative multichannel video programming and invites an alternative service provider to install its wiring within the existing molding or conduit, the incumbent provider should not be able to prevent such installation so long as it is justly compensated. USSB submits that a one time nominal fee would be a fair price for use of the molding or conduit space. Such a rule would promote competition and consumer choice and would not be an unconstitutional taking without just compensation under the Fifth Amendment.

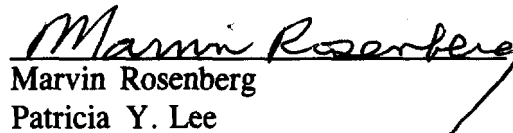
19. The Commission proposes to move the demarcation point, when it is "truly physically inaccessible," to a point at which it first becomes physically accessible. *Further Notice* at ¶ 84. Instead of burdening the Commission's staff with the inevitable case-by-case determinations that will result from this proposal, the Commission should simply place the demarcation point at the lockbox. If, however, the Commission does adopt this proposal,

then it should broadly define "truly physically inaccessible" to encompass any instance where the demarcation point is not in an open, common space, but is behind any wall, floor, ceiling, or other structural component.

20. USSB supports the Commission's proposal to adopt a rule requiring video service providers to sell to the MDU owner, upon installation, the home wiring and home run wiring in all future installations. *See Further Notice* at ¶ 85. If the proposal is adopted, the Commission should leave the price of the wiring to private negotiations. Such a rule would increase competition and enhance consumer choice in future installations by permitting MDU owners to control access to the home run wiring from the start.

Respectfully submitted,

**UNITED STATES SATELLITE
BROADCASTING COMPANY, INC.**


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